

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**PHILLIP BURKS, INDIVIDUALLY, AND
AS ADMINISTRATOR OF THE ESTATE
OF PATRICIA BURKS, AND ON BEHALF
OF AND FOR THE USE AND BENEFIT OF
THE WRONGFUL DEATH BENEFICIARIES
OF PATRICIA BURKS**

PLAINTIFF

VS.

CIVIL ACTION NO. 3:25-cv-115-DMB-RP

**DIVERSICARE OF BATESVILLE, LLC
D/B/A DIVERSICARE OF BATESVILLE,
DIVERSICARE MANAGEMENT SERVICES, LP,
DIVERSICARE LEASING, LP, UNIDENTIFIED
ENTITIES 1-10, AND JOHN DOES 1-10**

DEFENDANTS

NOTICE OF REMOVAL

TO: David Crews, Clerk of Court
United States District Court
Northern District of Mississippi
Federal Building
911 Jackson Avenue East
Oxford, MS 38655

Kirk Willingham, Panola County Circuit Clerk
Panola County Courthouse Batesville
151 Public Square
Batesville, MS 38606

R. Paul Williams, III (MSB #102345)
Williams Newman Williams, PLLC
640 North State Street
Jackson, MS 39225
paul@wnwlegal.com

Attorney for Plaintiff

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § § 1332, 1441, and 1446, Defendants Diversicare of Batesville, LLC d/b/a Diversicare of Batesville (“Diversicare of Batesville”); Diversicare Management Services, LP (“Diversicare Management”); and Diversicare Leasing, LP (“Diversicare Leasing”)(collectively referred to as “Diversicare”), hereby remove this action titled *Phillip Burks, Individually, and as Administrator of the Estate of Patricia Burks, and on behalf of and for the Use and Benefit of the Wrongful Death Beneficiaries of Patricia Burks vs. Diversicare of Batesville, LLC d/b/a Diversicare of Batesville; Diversicare Management Services, LP; Diversicare Leasing, LP, Unidentified Entities 1-10, and John Does 1-10*; bearing Case No. 2025-cv-087-JMP2; In the Circuit Court of Panola County, Mississippi, Second Judicial District, to the United States District Court for the Northern District of Mississippi, Oxford Division. In support of removal, states as follows:

BACKGROUND

1. On February 26, 2025, Plaintiff Phillip Burks, Individually, and as Administrator of the Estate of Patricia Burks, and on behalf of and for the Use and Benefit of the Wrongful Death Beneficiaries of Patricia Burks filed a Complaint in the Circuit Court of Panola County, Mississippi, Second Judicial District, assigned Civil Action No. Case No. 2025-cv-087-JMP2, and styled *Phillip Burks, Individually, and as Administrator of the Estate of Patricia Burks, and on behalf of and for the Use and Benefit of the Wrongful Death Beneficiaries of Patricia Burks vs. Diversicare of Batesville, LLC d/b/a Diversicare of Batesville; Diversicare Management Services, LP; Diversicare Leasing, LP, Unidentified Entities 1-10, and John Does 1-10* (the “State Court Proceeding”).

2. In the Complaint, Plaintiff asserts claims for Negligence, Medical Malpractice, and Gross Negligence. A copy of the originating Complaint is attached as Exhibit “A” pursuant to 28 U.S.C. § 1446, along with the entire state court record from the lower court.

3. Defendants remove on the basis of diversity jurisdiction under 28 U.S.C. §§ 1332, 1441 and 1446.

REMOVAL PURSUANT TO 28 U.S.C. §§ 1332, 1441 and 1446

Procedural Prerequisites

4. As further demonstrated below, this Court has jurisdiction over this matter based on diversity of citizenship. *See* 28 U.S.C. §§ 1332 and 1441.

5. This Notice is timely in accordance with 28 U.S.C. § 1446, as it was filed within one year of the filing of the Complaint. The removal is within the thirty-day period for removal under 28 U.S.C. § 1446(b) because Defendants were served on March 19, 2025.

6. The United States District Court for the Northern District of Mississippi, Oxford Division, is the federal judicial district and division encompassing the Circuit Court of Panola County, Mississippi, Second Judicial District, where this suit was originally filed. Therefore, this Court is a proper venue for this action pursuant to 28 U.S.C. §§ 104(b)(3) and 1441(a).

7. Written notice of the filing of this Notice of Removal is being served on the Plaintiff, and a copy of this Notice of Removal will be filed with the Clerk of the Circuit Court of Panola County, Mississippi, Second Judicial District, as provided by 28 U.S.C. § 1446.

Diversity Jurisdiction: Amount in Controversy

8. Pursuant to 28 U.S.C. § 1446(c)(2)(B), removal is proper on the basis of a sufficient amount in controversy if the court finds, by the preponderance of the evidence, that the amount in controversy exceeds \$75,000.

9. Under § 1446, “a defendants’ notice of removal need only include a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014).

10. In determining the amount in controversy, a district court must first examine whether it is “facially apparent” from the complaint that the claims exceed the jurisdictional amount. *Jackson v. Balboa Ins. Co.*, 590 F. Supp. 2d 825, 827 (S.D. Miss. 2008).

11. Plaintiff’s Complaint alleges that Defendants are liable for compensatory and punitive damages.

12. Accordingly, Defendants reasonably believe and therefore aver that the amount in controversy in this action exceeds \$75,000.00, exclusive of interest and costs, in satisfaction of 28 U.S.C. §§ 1332 and 1446.

Diversity Jurisdiction: Citizenship of the Parties

13. Diversicare of Batesville is a Delaware limited liability company. Diversicare Management and Diversicare Leasing are Tennessee Limited Partnerships. A limited liability company’s citizenship is determined by the citizenship of its members. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080-81 (5th Cir. 2008); *see also Whalen v. Carter*, 954 F.2d 1087, 1095 (5th Cir. 1992)(confirming that citizenship of a limited partnership is based upon each state the partners - general and limited - hold citizenship).

14. Complete diversity exists in this matter because none of the members or partners of the three Diversicare Defendants are residents of Mississippi, which is where Plaintiff’s deceased Patricia Burks was a resident at the time of her death.

15. Plaintiff Patricia Ann Burks, the Decedent, died intestate on May 1, 2024. At the time of her death, Decedent was an adult resident in the Second Judicial District of Panola County, Mississippi. Burks' estate is also being administered in Panola County Chancery Court.

16. The citizenship of the "John Doe employee" must be disregarded for the purpose of determining diversity of citizenship. *See* 28 U.S.C. § 1441(b); *see also Vaillancourt v. PNC Bank, Nat'l Ass'n*, 771 F.3d 843, 848 n.38 (5th Cir. 2014) (per curiam) (noting that the name John Doe is a fictitious name that need not be considered when determining diversity jurisdiction); *Weaver v. Metro. Life Ins. Co.*, 939 F.3d 618, 623 (5th Cir. 2019) (same).

17. Accordingly, complete diversity exists between Plaintiff and Defendants, and the amount in controversy is satisfied. This Court has jurisdiction over this action under 28 U.S.C. §§ 1332, 1441, and 1446.

CONCLUSION

WHEREFORE, Defendants Diversicare of Batesville, LLC d/b/a Diversicare of Batesville; Diversicare Management Services, LP; and Diversicare Leasing, LP file this Notice of Removal and remove this civil action to the District Court.

YOU ARE NOTIFIED to proceed no further in the Circuit Court Proceeding unless this action should be remanded by Order of the District Court.

This the 10th day of April, 2025.

**DIVERSICARE OF BATESVILLE, LLC
D/B/A DIVERSICARE OF BATESVILLE;
DIVERSICARE MANAGEMENT SERVICES,
LP; and DIVERSICARE LEASING, LP**

By: /s/ Sean R. Guy
Sean R. Guy
Their Attorney

OF COUNSEL:

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CERTIFICATE OF SERVICE

I do hereby certify that the foregoing pleading was filed electronically through the Court's CM/ECF system and served electronically on all parties enlisted to receive service electronically and sent a copy of same to the following:

R. Paul Williams, III (MSB #102345)
Williams Newman Williams, PLLC
640 North State Street
Jackson, MS 39225
paul@wnwlegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 10th day of April, 2025.

/s/ Sean R. Guy
Sean R. Guy